

FINAL REPORT OF THE DEPARTMENT OF JUSTICE

**USE OF DEADLY FORCE BY UNITED STATES MARSHALS SERVICE TASK
FORCE**

SUBJECT: EVELIO RIENECKER RIVERA

OFFICERS: TIMOTHY D. WEBB, JOSH DIGIACOMO and GEORGE RAMSBURG

DATE OF INCIDENT: DECEMBER 10, 2020

Dated: May 21, 2021

Scope of the Investigation

This is the final report of the Delaware Department of Justice, Division of Civil Rights and Public Trust (“DCRPT”), arising out of the investigation of the use of deadly force by United States Marshals Service (“USMS”) Task Force Officers, specifically, Senior Corporal Timothy D. Webb of the Milford Police Department, Delaware State Police Corporal Josh DiGiacomo, and Probation and Parole Officer George Ramsburg, against fugitive Evelio R. Rivera. DCRPT reviewed evidence consisting of interviews of civilian witnesses, interviews of police witnesses, scene photos, surveillance footage, police reports, medical records, the autopsy report, and the ballistics report. Attorneys with DCRPT reviewed this use of force incident for the Department of Justice.

Purpose of the Department of Justice Report

The Department of Justice determines whether a law enforcement officer’s use of deadly force constitutes a criminal act. The Department of Justice does not establish or enforce internal police policies concerning the proper use of deadly force by law enforcement officers. Law enforcement agencies are responsible for establishing and enforcing guidelines for the use of force by their officers and for determining whether an officer’s actions were consistent with such guidelines in a given case. This report expresses no opinion whether involved officer’s actions complied with departmental policies or procedures. This report covers Delaware’s third and final officer-involved fatal shooting in the year 2020.¹

Facts

Evelio R. Rivera (“Rivera”) was wanted for an attempted murder charge involving his use of a handgun toward his brother after a disagreement at a party in Reading, Pennsylvania. The involved officers were aware that Rivera had a significant criminal history, including convictions for weapons offenses, aggravated assault, drugs, and domestic violence. He was on parole at the time of the attempted murder and was listed as an absconder by the Pennsylvania Parole Board. To avoid apprehension, Rivera fled to the Rehoboth Beach area with his girlfriend and her three children. They were staying at the Econo Lodge Inn, room 326 located on Coastal Highway in Rehoboth Beach, Delaware.

During the initial days of their brief relationship, Rivera took possession of his girlfriend’s handgun, a Taurus G2C 9mm.² Rivera’s girlfriend later told investigators that she was afraid of Rivera, and that he had pulled the gun on her. Also, Rivera told her he was not going back to jail. During interviews with Rivera’s family members, they revealed he was bipolar and not taking his

¹ Previous reports were issued in the 2020 cases of Brandon Roberts and Sheldon Francis.

² This is the same handgun used by Rivera in both the attempted murder in Reading, PA, as well as the shooting of Cpl. Webb on December 10, 2020.

medication and would “flip” on family members. His mother asked investigators in this case, “So it’s true that he’s not going to hurt us anymore?”

On or about the afternoon of Thursday, December 10, 2020, United States Marshals Service (“USMS”) Task Force members were notified of a lead on Rivera’s possible location. Cpl. Webb, a Milford Police Officer and a member of the USMS Task Force, volunteered to drive past the Econo Lodge and attempt to locate Rivera’s girlfriend’s vehicle. Cpl. Webb conducted a check of the parking lot and observed Rivera in the company of a female and two of her children in the vehicle.³ The vehicle then left the parking lot.

Initially, Cpl. Webb and the USMS Task Force intended to develop a plan to apprehend Rivera the following morning. Upon further discussion, the Task Force decided they would respond to the area and attempt to apprehend Rivera that evening. Cpl. Webb, along with fellow Task Force members Cpl. DiGiacomo and Officer Ramsburg, established surveillance positions and developed a plan on how they would take Rivera into custody. There was a concern that the apprehension would be more dangerous if they allowed Rivera to exit the vehicle or get into his hotel room.

At approximately 7:45 pm, the vehicle Rivera was operating returned to the parking lot of the hotel. It did a lap around the building⁴ before pulling, head in, to a parking space at the front of the building. Cpl. Webb gave the command to initiate their apprehension strategy and the officers drove their vehicles to the assigned positions.

Cpl. Webb parked his vehicle offset from the left rear of the suspect vehicle, Cpl. DiGiacomo parked somewhat behind Cpl. Webb’s vehicle (perpendicular to the line of parked vehicles), and Officer Ramsburg parked his vehicle perpendicular to the passenger’s side of the suspect vehicle. (Figure 1 is a rendering of the parking lot.)

Cpl. Webb exited his vehicle, identified himself as a U.S. Marshal, and ordered Rivera to show his hands while moving toward Rivera’s driver side door. Rivera exited the driver’s side door and immediately began firing his Taurus handgun at Cpl. Webb, striking him at least six times.⁵ Cpl. Webb returned fire, striking Rivera. Cpl. Webb fell to the ground, severely wounded, as Rivera ran through the parking lot.

It appears, due to two shell casings in that area, that Rivera fired two additional rounds as he was running between Cpl. Webb’s vehicle and Cpl. DiGiacomo. As he ran through the parking lot, Cpl. DiGiacomo and Officer Ramsburg fired additional shots at Rivera. Rivera fell near a tree

³ The oldest of the three children remained in the room at the Econo Lodge.

⁴ This type of activity is consistent with conducting counter-surveillance try to identify law enforcement.

⁵ Cpl. Webb suffered five gunshot wounds and one bullet struck his vest.

located within a landscaped area of the parking lot. When officers approached Rivera, he appeared deceased. Rivera had expended all of the ammunition in the weapon, however a loaded spare magazine was located on the ground near Rivera, suggesting Rivera may have been in the process of reloading.

As the exchange of gunfire between Rivera and officers was taking place, Rivera's girlfriend removed her children from the vehicle and entered her hotel room. Rivera's girlfriend and her children were not injured.

Cpl. DiGiacomo rendered aid to Cpl. Webb at the scene. Cpl. Webb was then assisted into Cpl. DiGiacomo's vehicle and driven to Beebe Hospital for treatment.⁶ He was later transported via helicopter to Christiana Care for advanced care.

Cpl. Webb sustained the following injuries: a fractured femur; a left shoulder gunshot wound; a right upper arm gunshot wound requiring the removal of skin and muscle; an armpit and right arm gunshot wound with a lodged, inoperable bullet; a gunshot wound to his chin; and injuries to both of his hands from falling to the ground.

Police Witnesses:

Senior Corporal Timothy Webb:

Cpl. Timothy Webb is employed by the City of Milford Police Department and has been with the Department for 13.5 years. He is a member of the U.S. Marshal's First State Fugitive Task Force. On December 10, 2020, Cpl. Webb worked the 8:00 AM to 4:00 PM shift. After arriving home around 5:00 PM, Cpl. Webb received a U.S. Marshals group text message stating that a fugitive wanted in Pennsylvania for multiple shootings was potentially staying at the Rehoboth Econo Lodge. The text contained the name and picture of the fugitive, Evelio Rivera. Cpl. Webb called the Deputy U.S. Marshals supervisor, Toby Conrad, and stated that he lived close to the Econo Lodge and could drive by to see if Rivera's vehicle was there. Cpl. Webb drove there, about 15 minutes away, and saw Rivera's white SUV in the parking lot. He positively identified Rivera, who was getting into the vehicle with a woman and two small children. Cpl. Webb reported this to Deputy Conrad, who advised Cpl. Webb to stay clear because he was by himself, and that they would group with task force members in the morning.

Cpl. Webb and other task force members then decided that it would be best to take Rivera into custody that evening. So, Cpl. Webb and Deputy Conrad decided that Cpl. Webb would return to the Econo Lodge to do surveillance and wait for the additional task force members who

⁶ Cpl. DiGiacomo decided to transport Cpl. Webb in a police vehicle because it was the quickest way to get him to the hospital. This did alter the integrity of the shooting scene because Cpl. DiGiacomo's vehicle was no longer present. This action is in line with best practices for rapid care in emergency situations where waiting for an ambulance to transport is counterproductive.

were en route. Cpl. Webb returned to the hotel and set up surveillance in the center of the Econo Lodge parking lot.

Additional Task force members, Corporal Josh DiGiacomo and Officer George Ramsburg, arrived and set up surveillance positions at the south and north ends of the parking lot. Cpl. Webb observed Rivera's vehicle enter the hotel parking lot from Route 1 and drive once around the parking lot. Rivera then parked in the front row of the parking lot, in front of the pool facing the hotel. Rivera was driving and a woman, later identified as his girlfriend, was in the front passenger's seat. Cpl. Webb did not see the two children but thought they were in the car because he saw them getting into the vehicle earlier. Cpl. Webb and his partners, Officer Ramsburg and Cpl. DiGiacomo, communicated via radio and decided to arrest Rivera before he reentered the hotel. They decided that Cpl. DiGiacomo would approach Rivera's car from the driver's side, Officer Ramsburg from the passenger side, and Cpl. Webb to the rear of Rivera's vehicle. Cpl. Webb was in his police vehicle, a silver unmarked Dodge Nitro. The vehicle had undercover-style red and blue lights that were not activated at the time.

Cpl. Webb was the first one to confront Rivera and had his handgun drawn because Rivera was wanted for a shooting and was considered armed and dangerous. He exited his vehicle, yelling "U.S. Marshal, show me your hands." Cpl. Webb wore soft body armor and a plate carrier tactical vest clearly marked with "POLICE" and "U.S. Marshals Fugitive Task Force." Cpl. Webb then saw Rivera's driver side door swing open and a hand emerge, and next saw "muzzle flashes." He knew that Rivera was shooting at him. Rivera continued to shoot as he exited the vehicle. Cpl. Webb stated that he returned fire as he worked his way to the back of Rivera's vehicle for cover. He was about ten feet from Rivera.

Cpl. Webb fired his Milford PD department-issued handgun, a Glock 9mm. Cpl. Webb stated the weapon was fully loaded with 17 rounds in the magazine and one in the chamber. The Glock is equipped with a weapon mounted flashlight which was activated. Cpl. Webb said he does not know how many rounds he fired. He recalled being in fear of being killed and in fear for the potential serious injury or death of his partners and of bystanders.

Cpl. Webb said that the next thing he remembered was being on the ground, his leg in pain, and unable to feel his hands. He continued to hear shots being fired but did not know where they were coming from. Cpl. Webb saw his own gun under Rivera's vehicle and could not get to it. He wanted to get cover, so he crawled under Rivera's vehicle from the rear.

Cpl. Webb then heard the gunshots stop and heard Cpl. DiGiacomo and Officer Ramsburg yell for each other – Cpl. DiGiacomo then yelled for Cpl Webb. Cpl. Webb then recalled that Cpl. DiGiacomo approached him and asked where he was hit. Cpl. Webb stated that he didn't know for sure, but that he felt pain in his leg. Cpl. Webb told Cpl. DiGiacomo to apply a tourniquet to his leg, which he did. Cpl. DiGiacomo then put Cpl. Webb in the rear of his vehicle and drove him to Beebe Hospital for treatment.

Cpl. Webb sustained five gunshot wounds and serious injuries. He was struck once in the right femur, close to his hip – shattering his femur. He required a metal rod in his femur, from hip to knee. One projectile went through his left shoulder. One projectile grazed his right arm and tore a chunk of skin and muscle from the arm. One projectile entered the underside of Cpl. Webb's right arm, traveling through the bicep into the elbow. It remains lodged in his elbow because it is too close to a nerve to remove. One projectile lodged in Cpl. Webb's chin was removed, along with additional shrapnel, from the chin and jawbone during surgery. Additional shrapnel moved from the femur and lodged in his lower abdomen; it will need to be removed with subsequent surgeries.

Deputy U.S. Marshal Toby Conrad

Deputy Conrad is a member of the U.S. Marshals Service assigned to the Delaware USMS Office. Deputy Conrad stated that on December 10, 2020, he started his shift around 4:30 P.M. Around that time, he received a collateral lead request from a Reading, PA U.S. Marshal regarding the suspect, Rivera. He was told that the U.S. Marshals wanted to come down Friday morning to do surveillance on the Econo Lodge based on license plate reader hits. Around 5:30 P.M., Deputy Conrad reached out to Officers Webb, DiGiacomo, and Ramsburg to set up an 8:00 A.M. meeting the next morning near the Econo Lodge to conduct surveillance.

Cpl. Webb then told Deputy Conrad that he lived 15 minutes away from the Econo Lodge and would drive by to see if he saw the target vehicle. Officer Web then called Deputy Conrad and said he saw Rivera's vehicle and saw Rivera get into the car with a woman and two small children. Deputy Conrad sent Cpl. Webb a picture of Rivera – Cpl. Webb confirmed it was him. Deputy Conrad advised him to let the vehicle go and that they would reconvene in the morning.

Deputy Conrad pulled license plate registration records and saw that Rivera had been at the Econo Lodge for over a month so he thought Rivera would still be present at the hotel the next day. Officers Webb, DiGiacomo, and Ramsburg then decided that they had sufficient personnel to apprehend Rivera that evening. Deputy Conrad was driving south to meet the Task Force Officers at the Econo Lodge and heard Officers Webb and Ramsburg setting up a plan over the radio. Deputy Conrad then had to turn down the radio to take a phone call, and the next thing he heard was "shots fired" on the radio. Deputy Conrad was still north of Dover at this time and it took him a while to arrive on scene.

Probation and Parole Officer George Ramsburg

Officer George Ramsburg is a member of the Delaware Department of Correction Probation and Parole ("DE DOC") and is assigned to the U.S. Marshals Task Force. On December 10, 2020 around 6:00 P.M., Officer Ramsburg received a group text message to U.S. Marshals Task Force members notifying him of the location of a suspect (Rivera) wanted for attempted murder at the Econo Lodge hotel in Rehoboth Beach, DE. The text message identified that Rivera was driving a white Dodge Journey. Officer Ramsburg stated that Cpl. Webb then

drove to the Econo Lodge because he did not live far from the location. Cpl. Webb positively identified Rivera, his girlfriend, and her children in the Dodge Journey and reported it to the group text message. Cpl. Webb then left the hotel. The group text discussed coordinating an effort to arrest Rivera the following morning, using task force members from Delaware and Salisbury, Maryland.

Officer Ramsburg was home at this time but decided to get ready to assist with Rivera's arrest that night. Officer Ramsburg dressed in plain clothes with a bullet proof vest underneath. He was also equipped with a plate carrier with a "POLICE" patch on the front, a taser, a DE DOC issued firearm with an attached flashlight, two loaded magazines, an additional flashlight on his carrier, and a miscellaneous pouch. Officer Ramsburg drove his 2016 Black Dodge Ram 1500 police truck to the Econo Lodge and advised Cpl. Webb via radio that he was en route. Cpl. Webb responded that he was in the parking lot of the Econo Lodge and did not see Rivera's car. Officer Ramsburg arrived around 7:15pm and drove around the vicinity of the hotel and a nearby Cracker Barrel – he did not see Rivera's car either. Then Cpl. DiGiacomo arrived and did the same check of the area with negative results for Rivera's vehicle. The three officers decided to position their vehicles to surveil the area and await other task force members.

After some unidentified time, Officer Ramsburg stated that Rivera arrived in his vehicle. Officer Ramsburg was at a distance and could not see the vehicle but relied upon Cpl. Webb's positive identification of Rivera's vehicle. Rivera drove behind the hotel at which point Cpl. DiGiacomo drove towards the rear of the hotel as well to determine what Rivera was doing. Rivera continued to drive around the hotel, coming into Officer Ramsburg's view, and parked facing the front of the hotel. Officer Ramsburg observed a parked van next to Rivera's car but did not see any movement within it. Officer Ramsburg also noted that there was a row of parked vehicles behind Rivera's parking space. Rivera remained in the vehicle and did not get out immediately. During that time, Officer Ramsburg received radio communications not to allow Rivera to enter the hotel because it would pose a greater risk of harm to others – the officers decided to arrest Rivera in the parking lot.

Officers Ramsburg, Webb and DiGiacomo slowly drove towards Rivera's parked vehicle from different directions. Officer Ramsburg drove towards the passenger side of Rivera's car with his car lights off as Cpl. Webb drove towards the rear of Rivera's car, and Cpl. DiGiacomo advanced on the driver side. Officer Ramsburg then turned on all of his vehicle's emergency lights and saw W1, Rivera's girlfriend, in the front passenger seat. W1 opened the door but then immediately shut it. All officers exited their vehicles and Cpl. Webb gave verbal commands to Rivera to show his hands. Officer Ramsburg saw Rivera get out of the driver seat, leaving his door open, and immediately heard "a hail of gunfire." Officer Ramsburg observed Rivera's left arm extended and heard gunfire coming from Rivera's location. He also stopped hearing commands from Cpl. Webb. Officer Ramsburg saw Rivera walk towards the rear of his vehicle, in Cpl. Webb's direction. Officer Ramsburg saw Rivera's left side through the rear windows of Rivera's vehicle and fired one shot through the glass at Rivera. Officer Ramsburg

stated he fired because he considered Rivera to be a deadly threat and active shooter aimed at harming Officers Webb or DiGiacomo.

Rivera then ran to the left of Officer Ramsburg – and Officer Ramsburg pursued him on foot. Officer Ramsburg realized Rivera was in between him and Corporal DiGiacomo, putting all of them in a crossfire. Officer Ramsburg decided not to shoot in fear of hitting Corporal DiGiacomo. At this time, Officer Ramsburg believed Cpl. DiGiacomo stated Cpl. Webb was hit. Officer Ramsburg observed Rivera run towards the row of vehicles near the Cracker Barrel. Officer Ramsburg, again, decided not to shoot at Rivera in fear that if he missed, the bullet would go into the Cracker Barrel. As Rivera ran, Officer Ramsburg heard multiple gunshots but was unable to determine who was shooting.

Rivera then cleared the Cracker Barrel and ran towards Route 1 and the parking lot. Officer Ramsburg saw Rivera extend his left arm again and decided to fire his gun at Rivera. Officer Ramsburg thought it was a safer area to shoot and wanted to stop Rivera. Officer Ramsburg observed Rivera take a step in Corporal DiGiacomo's direction, then drop to the ground with his hands up. Officer Ramsburg saw a gun and magazine laying behind Rivera. Cpl. DiGiacomo asked Officer Ramsburg if he was safe which Officer Ramsburg affirmed. Cpl. DiGiacomo then ran back to Cpl. Webb's location. Officer Ramsburg believed Cpl. DiGiacomo tried to load Cpl. Webb in his police vehicle to transport him to the hospital. Officer Ramsburg remained, by himself, with his gun pointed at Rivera, laying on the ground. Rivera turned to the left and did not move anymore. Officer Ramsburg yelled to surrounding civilians "stay back, Police." Officer Ramsburg stood about 5-7 yards from Rivera for a moment until Wicomico County Deputy / U.S. Marshals Task Force Officer Jones arrived. Once Officer Jones arrived, they moved closer to Rivera and Officer Ramsburg kicked the gun and magazine away. Officer Jones checked Rivera's neck and told Officer Ramsburg that he was dead. EMTs and other task force officers arrived and secured the scene. Officer Ramsburg did not sustain any injuries.

Corporal Joshua DiGiacomo

Cpl. DiGiacomo is a member of the Delaware State Police (DSP) and was assigned to the Fugitive Task Force with the U.S. Marshals Service. On December 10, 2020 he was working from 7:00 A.M. to 3:00 P.M but received a text message from a Deputy Marshal in Wilmington around 5:10 P.M. that indicated they had a lead on a fugitive (Rivera) in the area. The target was wanted out of Reading, Pennsylvania for Attempted Murder. The information was that the target was at the Econo Lodge in Rehoboth Beach and that the target's vehicle, a white Dodge Journey, was seen there recently. Cpl. Webb texted the group that he was at the area and observed the target vehicle at the Econo Lodge.

Cpl. Webb witnessed the target leave the Econo Lodge with a woman and two children and get into the vehicle. Cpl. Webb was able to identify the target as Rivera. The vehicle left the area and Cpl. Webb updated the other officers. The Fugitive Task Force Officers waited at

the hotel for Rivera to return. Cpl. DiGiacomo arrived at the hotel at approximately 7:30 P.M. and rode through the parking lot to the back of the building. Cpl. DiGiacomo made contact with the manager and inquired about whether Rivera was renting a room. The manager told Cpl. DiGiacomo that he was not, but did say that a person affiliated with Rivera was renting a room there. Cpl. DiGiacomo went back to his vehicle and equipped his tactical vest with U.S. Marshal displayed on it. Soon thereafter, Rivera's vehicle returned to the hotel and Cpl. DiGiacomo was able to identify Rivera as the driver and observed a passenger in the front seat. He was unable to determine whether there were any other passengers in the vehicle.

The Task Force Officers decided that their best opportunity to apprehend Rivera was as he was exiting his vehicle. Cpl. DiGiacomo was parked at the south side of the Econo Lodge, Officer Ramsburg was parked at the northside of the nearby Cracker Barrel, and Cpl. Webb was parked in front of the Cracker Barrel. Cpl. Webb radioed to the group that he could see Rivera's vehicle parking. In front of the vehicle was a bush and, on the passenger side was a pool. Cpl. Webb approached the back of the vehicle and yelled commands to "show your hands". Cpl. DiGiacomo lost sight of Cpl. Webb as he went behind a nearby parked vehicle. Cpl. DiGiacomo saw muzzle flashes and heard approximately 8 or 9 shots fired. He then saw Rivera fleeing towards the Cracker Barrel parking lot and saw an additional two muzzle flashes. At that point Cpl. DiGiacomo fired at Rivera. Cpl. DiGiacomo told investigators that when he fired, he was aware that there was nothing behind Rivera that would be in the line of fire. He continued to hear shots fired from Rivera so he fired back another time. He saw Rivera fall to the ground between the Econo Lodge and the Cracker Barrel.

After the shooting, Cpl. DiGiacomo called out for the other officers and Cpl. Webb yelled back, "I'm hit". Cpl. DiGiacomo ran over and found Cpl. Webb next to Rivera's vehicle covered in blood. Cpl. DiGiacomo applied a tourniquet to Cpl. Webb's right leg. He heard glass break on the driver's side of the vehicle and he yelled at the person in the vehicle to "stay put". Cpl. DiGiacomo picked up Cpl. Webb and put him in the backseat of his vehicle and then drove him to the hospital. He radioed out that the suspect was down but an Officer was struck. He took Cpl. Webb to Beebe hospital.

Task Force Officer Benjamin "Matt" Jones

Task Force Officer (TFO) Jones is a Deputy for the Wicomico County Sheriff Office in Salisbury, Maryland and was assigned to the Capitol Area Regional Fugitive Task Force, U.S. Marshals Service. On the day of the incident, TFO Jones had received notice that a Delaware task force needed backup to apprehend someone (later identified as Rivera) with a Pennsylvania warrant for Attempted Murder. While driving and approximately 2-3 minutes away from the location, TFO Jones heard "shots fired" on the police radio. When TFO Jones arrived in the parking lot, he saw Officer Ramsburg standing and watching over Rivera at gunpoint. TFO Jones walked to assist Officer Ramsburg and evaluate Rivera. Officer Ramsburg kicked Rivera's firearm away as Rivera laid face down. TFO Jones rolled Rivera over and checked his

vitals. TFO Officer determined that Rivera did not have a pulse, was not breathing and had lost a significant amount of blood. TFO Jones did not move anything else on the scene, moved his vehicle to block off the area, and remained with Officer Ramsburg until others arrived.

Reading, PA Investigator Josiah Fischer

On December 16, 2020, Investigator Fischer was interviewed as a part of this investigation. Officer Fischer is a member of the Reading, Pennsylvania Police Department and heard about the incident in Delaware. Officer Fischer was the investigating officer of the attempted murder incident that occurred in Reading, PA involving Rivera in October 2020. Officer Fischer explained that Rivera was at a Halloween party at a residence, Rivera became upset and slammed a refrigerator door closed as his two-year old nephew was grabbing juice. The child suffered a hematoma and later went to the hospital. Rivera grabbed a beer and went outside, in front of the residence. A camera from the across the street captured Rivera putting something in the trunk of his vehicle – later identified as a case of beer. The video then displayed Rivera pulling out a gun and firing at the front of the residence where Rivera’s brother and another person stood. Approximately 30 minutes later, Officer Fischer arrived at the scene and recovered 2 shell casings. Once a warrant was issued for the charge of attempted murder, Officer Fischer attempted to locate Rivera at multiple addresses with negative results. However, Officer Fischer identified the car Rivera was operating – a white Dodge Journey, registered to W1. Officer Fischer never made contact with Rivera or W1. Officer Fischer stated that Rivera was on parole with the State of Pennsylvania in October 2020.

Civilian Witnesses

Witness 1 (W1)

W1 is Rivera’s girlfriend. She stayed with Rivera at the Econo Lodge and was a passenger in the vehicle with Rivera on December 10, 2020. W1 said Rivera left Reading, PA because the police were looking for him. Rivera drove W1’s vehicle, a white Dodge Journey, to Rehoboth Beach. W1 said that Rivera also took W1’s firearm, a purple and black Taurus 9mm. W1 said the gun and ammunition was in his/her safe and that Rivera made W1 give him the code so he could get the firearm. W1 said that Rivera would carry the firearm with him everywhere and told W1 that “he wasn’t going back [to jail].”

On December 10, 2020, W1 finished work around 3:00 P.M. and returned to the Econo Lodge. Around 5:00 P.M., Rivera left to get food with W1 and two minor children. When they returned, Rivera drove around the hotel to see if any police were nearby. He parked the vehicle and police immediately approached the vehicle yelling, “Put your hands up!” W1 then heard shots being fired. W1 saw Rivera exit the car and run. W1 grabbed the two minor children and ran up to the room. W1 stayed in the room until police arrived.

Witness 2 (W2)

W2 was a passenger in a vehicle parked nearby when the shooting took place. W2 heard approximately ten gunshots and yelling. W2 turned towards the sound and saw Rivera fall to the ground. W2 put their head down and then heard additional gunshots and police yelling. When W2 looked back up they saw an officer approach Rivera as he was on the ground. W2 was unable to determine who was shooting.

Witness 3 (W3)

W3 was exiting their vehicle at the Cracker Barrel when they heard gunshots. W2 said they heard approximately eight to ten shots in the first volley. W3 then saw Rivera running and heard an officer yelling, "Get down!" W3 heard an additional two or three gunshots and saw Rivera fall. W3 was unable to see Rivera's hands or if anything was in them. W3 saw officers leaving quickly and more officers arriving shortly thereafter.

Witness 4 (W4)

W4 was working in a retail store in the area of Cracker Barrel near the Econo Lodge Hotel on December 10, 2020. W4 worked the 4:00 P.M. to 9:00 P.M. shift. W4 was stocking clothing near the window when he/she heard gunshots. W4 did not immediately register that they were, in fact, gunshots. W4 opened the door and heard additional gunshots, and then looked toward the Cracker Barrel "To Go" area. W4 saw a Cadillac Sedan (which was uninvolved) drive away. W4 heard people saying that someone was stabbed. W4 saw a plain clothed police officer with his gun drawn standing near the suspect (Rivera), who was on the ground, already deceased. W4 did not hear any communication between Rivera and police. W4 then heard an officer state "Police, get back" and went back inside.

Witness 5 (W5) and Witness 6 (W6)

W5, Rivera's brother, was interviewed on December 11, 2020 as a part of this investigation by DSP. When asked about his relationship with Rivera, W5 explained that they had not seen or talked with Rivera since October 2020. At that time, W5 and Rivera got into an altercation in Reading, PA where Rivera shot in W5's direction. W5 reported the incident to the police, and Rivera fled the state once he learned there was a warrant for his arrest. Prior to the incident in October, W5 explained that he and Rivera were very close and talked daily. W5 further stated that Rivera was doing well – he secured housing and a job and was generally in good health. However, W5 stated that Rivera's demeanor negatively changed when he stopped taking his medication for Bipolar-Schizophrenic Disorder. W5 further explained that he did not know W1 well and only saw W1 when she was with Rivera. W5 stated he found out about Rivera's death from W1's brother who contacted W6. W5 expressed sympathy for Cpl. Webb.

W6, Rivera's mother, was present for W5's interview and also spoke with the DSP Detective. W6 expressed sympathy for Cpl. Webb. W6 stated that Rivera had previously hurt W6 and others – W6 had a Protection From Abuse (PFA) Order against Rivera and was "petrified" of him. W6 stated she was in a state of shock and confusion by Rivera's death.

Physical Evidence

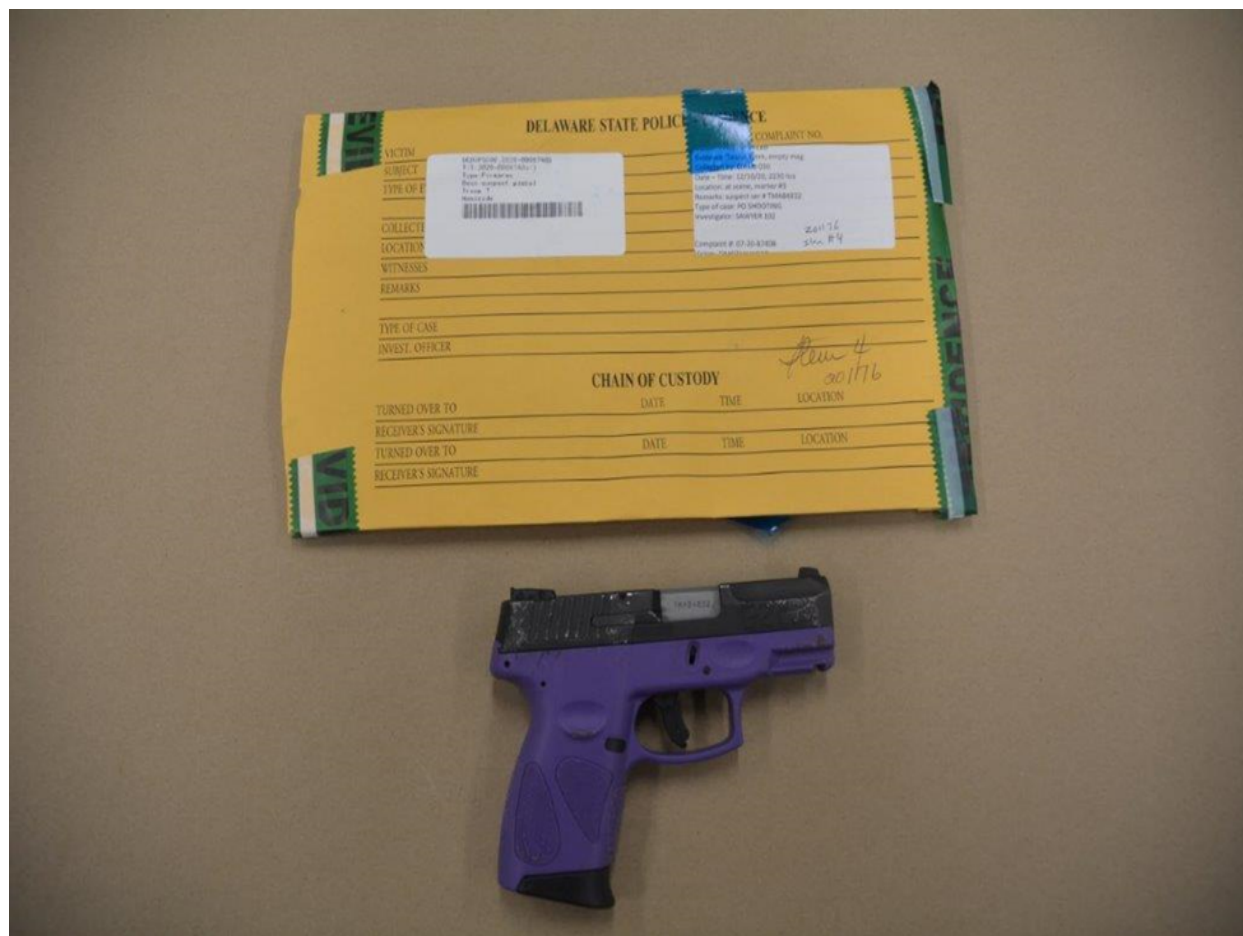
Surveillance Video:

There is surveillance footage from the Econo Lodge but it is of low-to-moderate quality. There is no sound and due to accent lighting present at the hotel, the initial contact between Cpl. Webb and Rivera is difficult to observe. The video depicts the positioning of Cpl. Webb's vehicle and his initial approach to the driver's side of Rivera's vehicle. You can observe that Webb is utilizing his weapon mounted lighting system. Rivera is then observed running between Cpl. Webb's and Cpl. DiGiacomo's vehicles. Cpl. DiGiacomo is observe firing at Rivera. Rivera continues running to a landscaped area in the parking lot as Officer Ramsburg approaches from the left side of the screen and Cpl. DiGiacomo continues to approach from the right. Rivera stops running and may turn to face officers before falling to the ground. Due to the quality of the video and possibly the frame rate, it is difficult to observe and count muzzle flashes from weapons.

Autopsy Report:

An autopsy was performed on the body of Rivera at the Wilmington Office of the State of Delaware Division of Forensic Science on December 11, 2020. Rivera was determined to have penetrating gunshot wounds (wounds without exits) to his chest, abdomen, right side of his back and his right arm, totaling four (4). Rivera also had perforating gunshot wounds (wounds with exits) to the left side of his back, the lower right side of his back, and to his left elbow, totaling three (3). Rivera also had two (2) tangential (graze) wounds – one to his inner left arm and one on the left side of his abdomen. His toxicology report shows the presence of cannabinoids but no alcohol or other drugs. The Chief Medical Examiner determined Rivera's cause of death to be multiple gunshot wounds.

Ballistics:



Purple and Black Taurus 9mm pistol, SN: TMA84832. Owned by Rivera's girlfriend.

Shell casings from the scene indicate this weapon was fired eleven (11) times. According to the ballistics report, one of the rounds fired by this weapon was recovered from Cpl. Webb's lower lip. The ATF Trace Report and the Ballistics Report are included in this public report.

Scene Diagram:

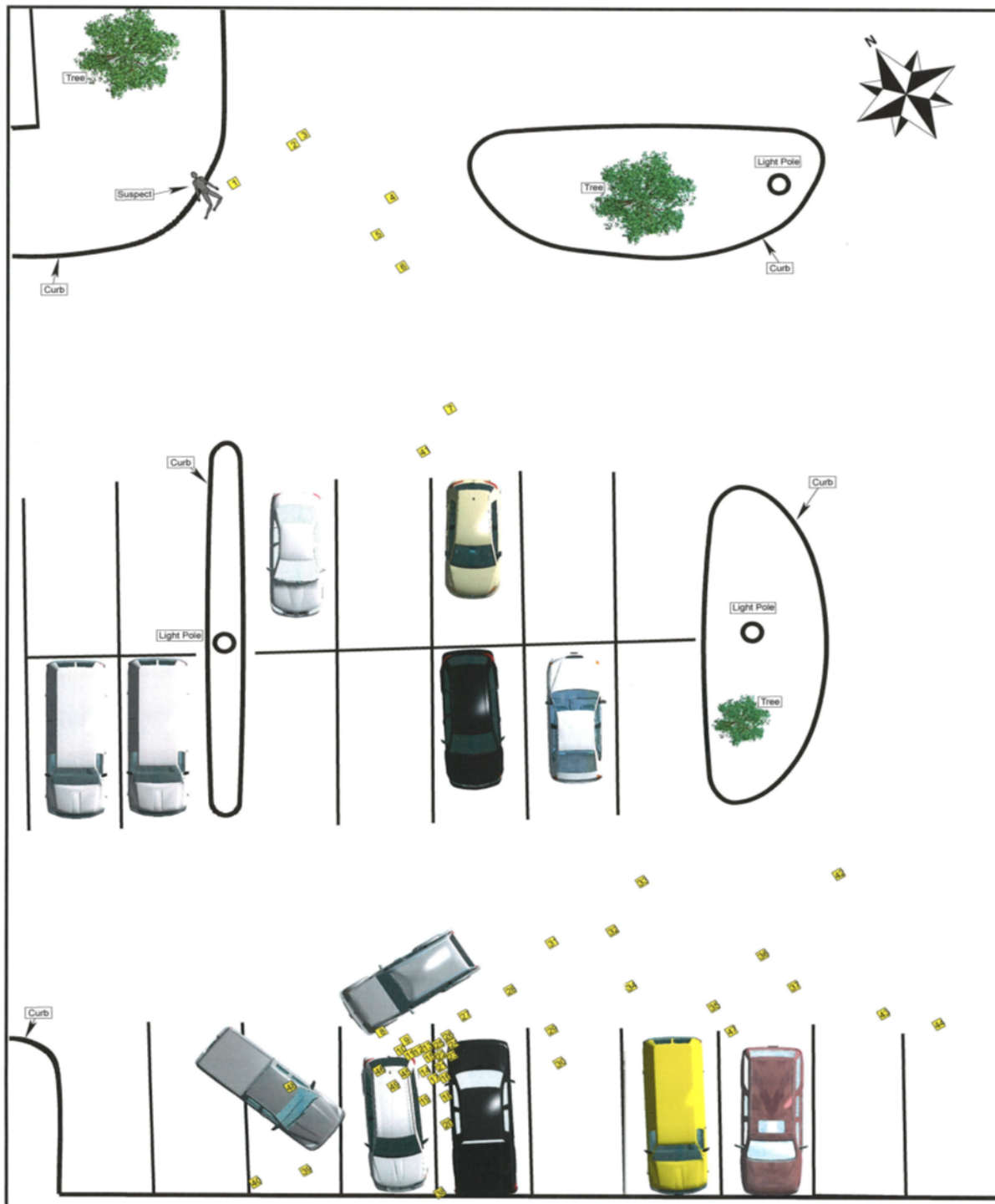


Figure 1, Sketch of Crime Scene showing the location of initial confrontation and the location of Rivera's body. Note: one police vehicle is absent as it immediately left the scene to transport Cpl. Webb to the hospital.

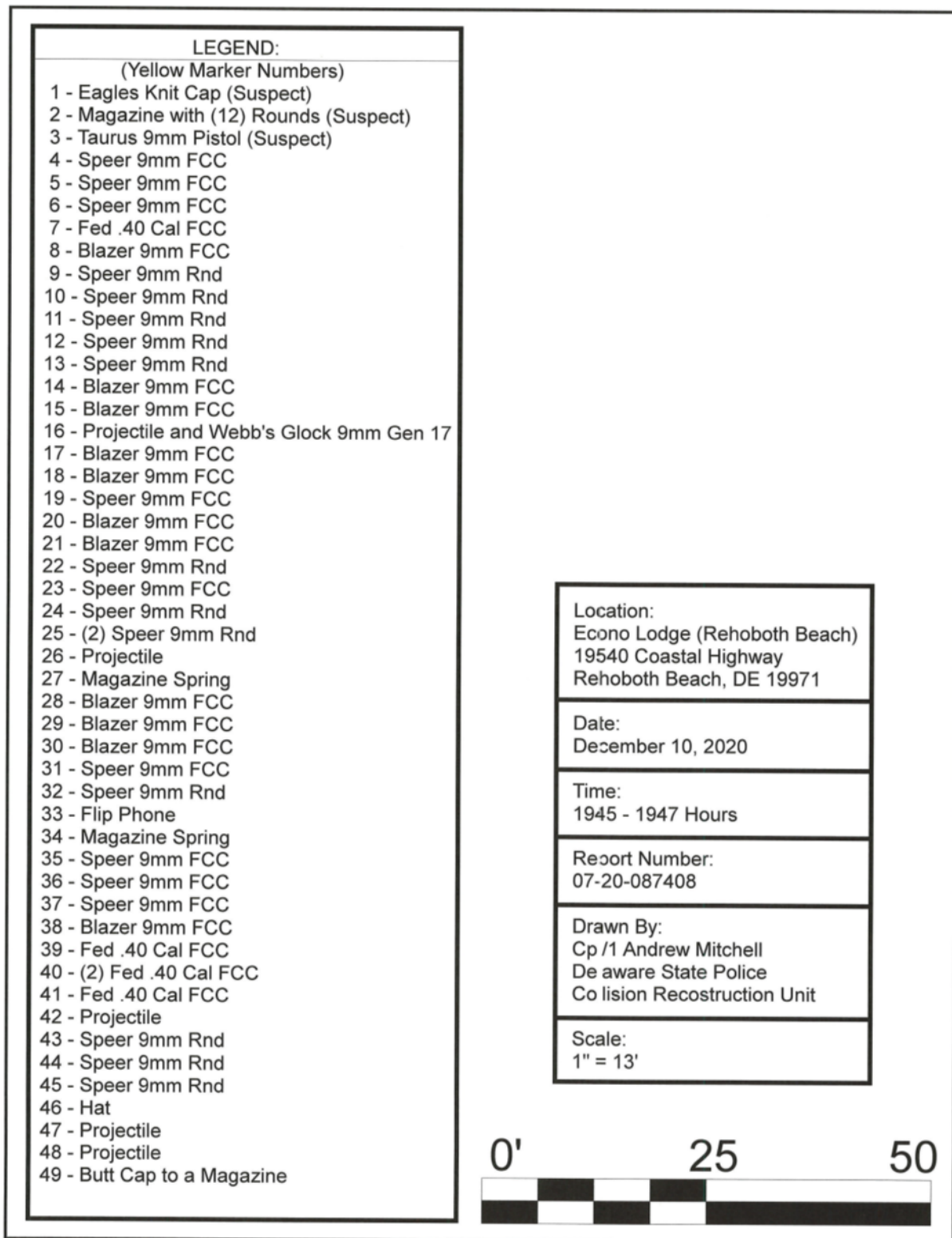


Figure 2, Legend for Figure 1.

Conclusion

The State must determine if the use of deadly force by Cpl. Timothy Webb, Cpl Joshua DiGiacomo and Probation Officer George Ramsburg of the USMS Task Force against Rivera was a criminal act. Title 11 Section 464 of the Delaware Code defines the legal use of force in self-protection. It provides, in pertinent part, that “[t]he use of force upon or toward another person is justifiable when the [officer] believes that such force is *immediately necessary* for the purpose of protecting the [officer] against the use of unlawful force by the other person on the present occasion.”⁷

Under Delaware law, the state of mind of any person, in this case the law-enforcement officer, is the legal test to determine whether the use of force was legally justifiable against another person. The specific factual inquiry is two-pronged. The first question is whether the officers actually believed, at the time they intentionally fired their weapon, that such action was necessary to protect themselves or others from death or serious physical injury. The second question is whether the officers were reckless or negligent in having such belief, or in acquiring or failing to acquire any knowledge or belief, which is material to the justifiability of the use of force. 11 *Del. C.* § 470(a). If such force is determined to have been justified, we will also examine whether such force negligently or recklessly created injury or risk of injury to innocent third parties pursuant to 11 *Del. C.* § 470(b).

Rivera’s danger to the public and the police was well known. He was a fugitive with a substantial history of violence and he was wanted for attempted murder. The USMS Task Force took on the responsibility of securing Rivera’s arrest. During their attempt to lawfully take Rivera into custody, Rivera shot at the officers. He fired the same handgun, multiple times, that he had used in his earlier attempted murder, and he caused serious, life-threatening injuries to Cpl. Webb. Under the circumstances, the Task Force officers’ use of deadly force in response to Rivera’s shooting was justified and necessary to protect themselves and others.

Furthermore, the Task Force officers were not reckless or negligent in forming the belief that force was immediately necessary. Rivera had a history of violence, was a parole absconder and a fugitive from an attempted murder case – and he fired repeatedly at the police who were trying to bring him to justice. The Task Force officers were not reckless or negligent in forming the belief that return fire was immediately necessary.

⁷ Justification of use of force for the protection of other persons is also applicable, *See* 11 *Del. C.* § 465 “(a) The use of force upon or toward the person of another is justifiable to protect a third person when: (1) The defendant would have been justified under § 464 of this title in using such force to protect the defendant against the injury the defendant believes to be threatened to the person whom the defendant seeks to protect; and (2) Under the circumstances as the defendant believes them to be, the person whom the defendant seeks to protect would have been justified in using such protective force; and (3) The defendant believes that intervention is necessary for the protection of the other person.”

Lastly, given that the police were justified to use force towards Rivera pursuant to 11 *Del. C.* § 464, we further determine that they were not negligent or reckless in injuring or creating a risk of injury to third persons under 11 *Del. C.* § 470(b). No third persons were injured in this case, despite the volatile and dynamic situation Rivera created.

Upon careful consideration of the available evidence and the application of expert opinion to that evidence, Cpl. Timothy Webb, Corporal Josh DiGiacomo, and Probation Officer George Ramsburg reasonably believed that the use of deadly force upon Rivera was immediately necessary for the purpose of protecting themselves and others. For these reasons, the Department of Justice concludes the use of deadly force in this case does not constitute a criminal offense under the laws of the State of Delaware.